

APRIL 2008

Campaign	
Jimmie E. Johnson Dated: April 11, 2008 File Number I-08-032	<p>Pursuant to Government Code Section 85305, a candidate for elective state office may not contribute unlimited funds to a committee controlled by a different candidate for elective state office established to oppose the qualification of a recall petition and any subsequent recall election. Government Code Section 85305 is not one of the “contribution limitations” described by Government Code Section 85315. Section 85305 is, instead, a provision limiting inter-candidate transfers that is separate and distinct from the “contribution limitations” referenced by Section 85315.</p>
Conflicts of Interest	
Lucille Kring Anaheim City Council Dated: March 4, 2008 File Number A-08-016	<p>A local official is advised the if she can rebut the presumption of materiality with respect to her leased business property, and she determines that the decision will not have a reasonably foreseeable financial effect of \$20,000 or more on her business she will not have a conflict of interest in participating in the decision.</p>
Councilmember Michael Wilson City of Vallejo Dated: April 14, 2008 File Number I-08-017	<p>A city attorney sought advice regarding whether city councilmember may participate in decisions related to a number of development projects involving clients of an architectural firm where he has an investment and works as an executive. The requestor also sought advice on whether the councilmember may participate in decisions involving approval of fees and capital improvement projects of a golf club where he is a member, and if the councilmember may participate in decisions involving an individual who provided him a personal loan through a business trust the individual controls. Requestor was advised that the councilmember may not participate in governmental decisions that come before the city council or the city’s redevelopment agency involving his firm’s clients if there is a reasonably foreseeable material financial effect on the firm, which is a source of income to him. Specifically, he must examine each decision about the projects to make sure it would not result in an increase or decrease in the value of the firm’s assets or liabilities of \$20,000 or more. The councilmember may not participate in decisions regarding the golf club if there is a reasonably foreseeable material financial effect on his personal finances and that of his immediate family increasing or decreasing by at least \$250 in a 12-month period. In addition, the councilmember may not participate in decisions that have a reasonably foreseeable material financial effect on the</p>

	<p>individual who provided the loan through the business trust because the individual, through his control of the business trust, is a source of income to the councilmember. Specifically, the councilmember may not participate in decisions that affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more.</p>
<p>Paul Westberg Sierra Sands Unified School District Dated: April 8, 2008 File Number I-08-026</p>	<p>A consultant under contract with a public agency is subject to the Act's conflict-of-interest provisions if he or she meets the requirements of Section 82048 and Regulation 18701(a)(2). When a public official participates in a government decision in violation of the Act's conflict-of-interest provisions, the Act does not automatically invalidate the decision. Instead, if the decision is challenged in litigation, the court may, in its discretion, invalidate the decision under Section 91003(b).</p>
<p>Paul Westberg Sierra Sands Unified School District Dated: April 22, 2008 File Number I-08-026a</p>	<p>An employee of an architectural firm under contract with a school district to perform services for a limited number of projects is not a "consultant" under Regulation 18701(a)(2) or a "public official" under Section 82048 where he does not make governmental decisions or perform substantially all the same tasks that normally would be performed by one or more staff members of a governmental agency.</p>
<p>David Bowlby, San Ramon Valley Planning Commissioner Contra Costa County Dated: April 22, 2008 File Number A-08-029</p>	<p>A city attorney sought advice regarding whether area planning commissioner may communicate with planning department staff and the Board of Supervisors regarding appeals of the issuance of a tree permit and modification of a Final Development Plan for a residence in a Planned Unit Development District. The applicant/homeowner is a client and source of income to the commissioner so official has a conflict-of-interest in the decision before the planning commission. The commissioner also wished to know whether he may make public comments about these items before the planning commission and the Board of Supervisors. The county's ordinance defines the "planning agency" as composed of various county departments including the planning commission and the board of supervisors. The various departments share the planning department staff. Based on the facts presented, decisions and appeals before the planning commission and the Board of Supervisors are decisions before the official's own agency. Therefore, the planning commissioner is subject to the broad prohibition that prevents him from communicating with any member, officer, employee or consultant with his agency, which, according to the facts provided, is composed of the various divisions of the county's planning agency and its staff, including planning department staff. In addition, there are insufficient facts to support that the Commissioner's personal interest is affected</p>

	by the above decisions. Therefore, the commissioner does not qualify for the exception under Regulation 18702.4(b) and may not make public comment on the appeals.
Richard McDonald City of Pasadena Planning Commission Dated: April 7, 2008 File Number I-08-034	Commissioner is member of the planning commission; he is also employed privately as an attorney. He represents a client on an issue that will need to appear before the planning commission, as well as other city commissions and agencies. He cannot represent his client in front of the planning commission or any other board or agency that is under appointment or budgetary control of the planning commission. He may, however, represent his client before other agencies and communicate with their staffs, so long as he does not purport to represent the planning commission in his communications.
Kevin Mullin City Councilmember South San Francisco Dated: April 8, 2008 File Number A-08-035	A city councilmember is advised that he would have a conflict of interest in participating in a decision regarding an award of a grant to a nonprofit organization when he has an economic interest in the organization as a source of income to him.
Harold Williams Carson City Council Dated: April 15, 2008 File Number I-08-052	City council member requested information regarding whether his position as an independent contractor with the water district, also a public agency, would create a conflict if the city council had decisions before it regarding the water district. Staff advised that the government salary exception does not apply if the position is not designated in the code, but that the public generally exception in Regulation 18707.1, particularly the comment at the end of that exception, might apply depending on the nature of the decisions.
Jan Horton City of Yorba Linda Dated: April 30, 2008 File Number A-08-057	Councilmember with property interest within 500 feet of redevelopment area but more than 500 feet from parcels involved in specific projects may participate in governmental decisions regarding the projects as long as the decisions will not act to determine, affirm, nullify, or alter the result of any other decisions relating to the redevelopment project area and there are no additional facts providing evidence of specific circumstances, as identified in Regulation 18705.2(b)(1), that make it reasonably foreseeable that the government decision will have a financial effect on the councilmember's property.
Paul Johnston, Ph.D., Chair, Personnel Commission Santa Cruz City School District Dated: April 28, 2008 File Number I-08-058	The chairman of a school district personnel commission asked whether he and members of his commission should be filing a Statement of Economic Interests, Form 700. Requestor was advised that, except in those instances when the FPPC is the code reviewing body, which it is not in the case of a single-county school district, the FPPC will not render advice regarding the interpretation of an agency's conflict-of-interest code or the application of that code to a specific individual until the person first requests a determination from the agency and the agency's code

	reviewing body pursuant to Regulation 18329.5.
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Conflict of Interest Code	
David L. Morton County of San Diego / Registrar of Voters Dated: April 8, 2008 File Number I-08-036	<p>Section 87302.3(a), added to the Act by Senate Bill 512 in 2007, requires every candidate for an elective office to file a statement of economic interests if the office is a designated position in the an agency's conflict-of-interest code. This requirement applies even when the agency's code has not specifically designated candidates for the elective office.</p>
Jennifer Fint Employment Risk Management Authority Dated: April 15, 2008 File Number A-08-038	<p>In response to a request clarifying whether certain insurance brokers should be designated employees of a Joint Powers Authority (JPA) and file statements of economic interest, staff advised that under the particular facts provided, the insurance brokers need not be designated in the JPA's conflict of interest code.</p>

Gift	
Carol Jimenez Deputy Attorney General Dated: April 22, 2008 File Number A-08-056	<p>A state official is advised that she need not report as gifts payments received from her ex-husband to take their daughter on a trip to visit a college campus. The payments are for the support of the child and are neither a gift nor income.</p>

Mass Mailing	
Ryan Hightower County of Riverside District Attorney's Office Dated: April 30, 2008 File Number A-08-050	<p>The proposed brochure, as submitted for review, is a prohibited mass mailing at public expense. The letter includes suggested changes that will allow the proposed mailing to be made under the letterhead/logotype exception. All other references to the elected officers, with the exception of one reference that is necessary to the functioning of a program, must be removed.</p>

Revolving Door	
Mr. Madison Wiggins Caltrans Dated: April 15, 2008 File Number I-08-037	<p>A former Caltrans employee is subject to the Act's permanent ban on "switching sides," prohibiting him from advising or representing any person before his former state agency, for compensation, in a judicial or other proceeding (including a contract) in which he participated while in state service. The Act's one-year ban also applies to the former "designated employee" of Caltrans. He is prohibited for one year after leaving state service from making any formal or informal appearance or any spoken or written communication before Caltrans, if it is for the purpose of influencing administrative or legislative action, as discussed below.</p>
James R. Hammer Department of Transportation, Caltrans Dated: April 8, 2008 File Number I-08-039	<p>Public official sought advice regarding the post-governmental restrictions provisions of the Act. Official wished to know what restrictions would be placed on his ability to do business with his agency and the state if he left</p>

	<p>state service and if he was offered a position with a consulting firm. Official was advised that the one-year ban would prohibit him from communicating with employees of his former agency, for one year after he leaves his agency, if the communication is for the purpose of influencing any legislative or administrative action, or influencing any discretionary act “involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.” The permanent ban would prohibit him from participating in any judicial, quasi-judicial or other proceeding in which he participated while a state administrative official at his agency. In addition, official was advised that he must abide by restrictions on a public official who is negotiating or has any arrangement concerning prospective employment.</p>
<p>Mark Stiffler City of San Diego, California Department of Justice Dated: April 17, 2008 File Number I-08-048</p>	<p>The Act’s post-governmental employment restrictions apply only to persons leaving state service, and thus do not bar an attorney formerly employed by the City of San Diego from prosecuting a case against the City. However, the Act may bar an attorney from representing a person, for compensation, in litigation against the state of California, if the attorney participated in that litigation while employed by the California Department of Justice, an agency of the state.</p>
<p>Vincent Brown Dated: April 17, 2008 File Number A-08-062</p>	<p>Follow up advice to Advice Letter A-08-041. Former state administrator official was advised that the prohibition would not apply to any state agencies organizationally under the agency for which he worked or represented because it did not appear that the agency for which he worked controlled the budget, personnel, and other operations of these other agencies.</p> <p>In addition, we advised that the prohibition only applied to a state agency for which he worked or represented during the 12 months prior to leaving his position. It did not apply to any agency he worked for or represented more than 12 months before his separation from state employment.</p>

April 2008
Juanita G. Lira